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The Commonwealth of Massachusetts
DEPARTMENT OF
TELECOMMUNI CATIONS AND ENERGY
Report to the General Court
Pursuant to Section 312 of the Electric Restructuring Act, Chapter 164 of the Acts of 1997
ON
Metering, Billing and Information Services
Lawrence Orange Library Other Lawrence
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December 29, 2000

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TABLE OF CONTENTS

- I. INTRODUCTION 1
- II. BACKGROUND 2
- III. THE DEPARTMENT'S INVESTIGATION 3
- IV. DESCRIPTION OF METERING, BILLING, AND INFORMATION SERVICES 4
- A. Metering-Related Services 4
- B. Billing-Related Services 5
- V. SHOULD METERING-RELATED SERVICES BE COMPETITIVELY OFFERED
- A. Arguments in Favor of Competition for Metering-Related Services 5
- B. Arguments Opposed to Competition for Metering-Related Services 9
- C. Comments on Advanced Metering 12
- D. Analysis and Recommendations 14
- 1. Introduction 14
- 2. Should metering-related services be unbundled from other monopoly service provided by distribution companies and provided through a competitive market? 14
- 3. Would the introduction of competition of metering-related services result in substantive savings to consumers? 19

- 4. Could savings produced by the unbundling of metering-related services be realized with little, or no, disruptions to employee staffing levels of the distribution companies? 22
- E. The Department's Recommendations Concerning Metering-Related Services
- VI. SHOULD BILLING-RELATED SERVICES BE COMPETITIVELY OFFERED 23
- A. Summary of Comments 23
- 1. Comments filed in Support of Competition 23
- 2. Comments filed in Opposition to Competition 24
- B. Analysis and Recommendations 26
- 1. Introduction 26
- 2. Should billing-related services be unbundled from other monopoly service provided by distribution companies and provided through a competitive market? 27
- 3. Would the introduction of competition of billing-related services result in substantive savings to consumers? 29
- 4. Could savings produced by the unbundling of billing-related services be realized with little, or no, disruptions to employee staffing levels of the distribution companies? 31
- C. Summary of the Department's Recommendations Concerning Billing-Related Services 31
- VII. SERVICE TERRITORY EXCLUSIVITY 32
- A. Introduction 32
- B. Summary of Comments 33
- C. Analysis and Recommendation 35
- VII. CONCLUSION 42

TABLE OF APPENDICES

Appendix A Section 312 of the Electric Restructuring Act, Chapter 164 of the Acts of 1997

Appendix B Joint Initial Comments of the Attorney General, Division of Energy Resources, Associated Industries of Massachusetts and The Energy Consortium ("Customer Group")

Appendix C Initial Comments of the Low-Income Energy Affordability Network

Appendix D Initial Comments of National Grid

Appendix E Initial Comments of Northeast Utilities System

Appendix F Initial Comments of Fitchburg Gas and Electric Light Company

Appendix G Initial Comments of Bay State Gas Company

Appendix H Initial Comments of NSTAR Companies

Appendix I Joint Initial Comments of Berkshire Gas Company, Boston Gas Company, Colonial Gas Company, Commonwealth Gas Company, Essex Gas Company, Fall River Gas Company and North Attleboro Gas Company

Appendix J Initial Comments of MHI Power Options

Untitled Appendix K Initial Comments of Automated Energy

Appendix L Initial Comments of Utility.com

Appendix M Initial Comments of Schlumberger Resource Management Services North America

Appendix N Initial Comments of SITHE

Appendix O Initial Comments of National Energy Marketers Association

Appendix P Joint Initial Comments of Enron Energy Services, Essential.com, New Energy East, L.L.C., SmartEnergy.com, Green Mountain Energy, Exelon Energy and Insite Services, L.L.C. ("Competitive Retail Providers")

Appendix Q Initial Comments of Utility Workers Union of America, AFL-CIO

Appendix R Initial Comments of Goulston & Storrs

Appendix 1 Joint Reply Comments of the Attorney General, Division of Energy Resources, Associated Industries of Massachusetts and The Energy Consortium ("Customer Group")

Appendix 2 Reply Comments of Cape Light Compact

Appendix 3 Reply Comments of National Grid

Appendix 4 Reply Comments of Fitchburg Gas and Electric Light Company Page 5

Appendix 5 Reply Comments of Bay State Gas Company

Appendix 6 Reply Comments of NSTAR Companies

Appendix 7 Reply Comments of Utility.com

Appendix 8 Reply Comments of Schlumberger Resource Management Services North America

Appendix 9 Reply Comments of SITHE

Appendix 10 Joint Reply Comments of Enron Energy Services, Essential.com, New Energy East, L.L.C., SmartEnergy.com, Green Mountain Energy, Exelon Energy and Insite Services, L.L.C. ("Competitive Retail Providers")

Appendix 11 Reply Comments of Utility Workers of America, AFL-CIO

Appendix 12 Reply Comments of Goulston & Storrs

Appendix 13 Transcript of Technical Session Held October 31, 2000

I. INTRODUCTION

This Report to the General Court details the results of the study and investigation conducted by the Department of Telecommunications and Energy ("Department") on issues relating to metering, meter maintenance and testing, customer billing and information services (collectively, "MBIS"), and the exclusivity of distribution companies service territories. Section 312 of the Electric Restructuring Act, Chapter 164 of the Acts of 1997 ("Act"), (1) directs the Department, in conjunction with the Division of Energy Resources ("DOER"), to conduct an investigation and study, to determine whether MBIS should be unbundled from other services provided by distribution companies and, instead, be competitively provided. (2) In accordance with the legislative direction, the Department must determine whether such Page 6

unbundling would result in substantive savings to consumers and, if so, whether these savings could be realized with little, or no, disruptions to employee staffing levels of the distribution companies. In addition, the General Court requires the Department to investigate whether distribution company service territories should remain exclusive, as required by G.L. c. 164,

§ 1B, or whether such exclusivity should be "terminated or altered in any manner."

If the Department determines that MBIS services should be unbundled and provided on a competitive basis, or that the exclusivity of distribution company service territories should be terminated or altered, the Department is required to file its recommendations and draft implementing legislation with the Clerk of the House of Representatives by January 1, 2001. The General Court noted that unbundling of, or retail competition for, these services would not be permitted unless provided by amendments to G.L. c. 164.

This Legislative Report will describe the MBIS currently provided by distribution companies, discuss the process that Department followed in preparation for this Report, summarize the comments received from all participants in our proceeding, and outline the Department's recommendations that no specific legislative action is necessary on issues relating to MBIS.

II. BACKGROUND

Prior to March 1, 1998, electricity consumers in Massachusetts were required to purchase a bundled package of electricity-related services (including MBIS) from their local electric companies. Since March 1, 1998 (the retail access date established by St. 1997,

c. 164), electricity consumers in Massachusetts have had the opportunity to purchase electric generation services, but not MBIS, from competitive suppliers. Consumers continue to receive MBIS from their local electric companies, regardless of whether they are receiving generation services from competitive suppliers or from the electric companies.

Additionally, prior to the Act, distribution company service territories were governed by the provisions of G.L. c. 164, §§ 87 and 88. The Act provides that distribution service territories shall be exclusive and based on the service territories actually served on July 1, 1997.

III. THE DEPARTMENT'S INVESTIGATION

On June 12, 2000, the Department, pursuant to Section 312 of the Act, opened an investigation regarding the extent to which MBIS, associated with electric service, may be provided on a competitive basis and on whether distribution companies' service territories should remain exclusive. In response to our notice of inquiry, the Department received 17 written initial comments from: (1) state agencies and consumer groups; (3) (2) distribution companies; (4) (3) marketers; (5) (4) unions; (6) and (5) representatives of realty development companies(7). The Department received 12 written reply comments in response to the initial comments. (8) On October 31, 2000, the Department held a public hearing and technical session to allow participants the opportunity to more fully outline their positions. (9)

IV. DESCRIPTION OF METERING, BILLING, AND INFORMATION SERVICES

A. Metering-Related Services

It is useful to divide metering-related services into two components, a "hardware" component and a "software" component. The hardware component is, as its name Page 7

implies, associated with the actual metering equipment. This component includes: (1) the installation of the metering equipment; (2) the periodic maintenance and inspection of the equipment; and (3) the replacement of the equipment, when necessary. The software component is associated with the usage data that is recorded and stored by the metering equipment. This component involves: (1) reading the metered consumption data; (2) inspecting and editing data to identify and correct any errors; (3) transmitting the metered data to those entities that need it for billing purposes (i.e. competitive generation suppliers); (4) storing data for customers' access; and (5) reporting the metered data, on a daily basis, to the Independent System Operator ("ISO") for calculating the wholesale load responsibilities of competitive generation suppliers operating in the Commonwealth.

B. Billing-Related Services

Billing-related services are associated with: (1) the calculation of bills, based on metered consumption data and the applicable prices; (2) the preparation and distribution of the invoice; (3) the transmission of the billing data to competitive generation suppliers, as applicable; and (4) the receipt of account payables and disbursement of payments to the distribution company and generation service provider.

Currently, distribution companies are required to offer two billing options to customers and competitive generation suppliers: (1) a complete billing option, under which customers receive a single bill from their distribution companies which includes both distribution company-related charges and competitive supplier-related charges; or (2) a pass-through billing option, under which customers receive one bill from their distribution companies and a second bill from their competitive suppliers. See 220 C.M.R. §11.04(10).

V. SHOULD METERING-RELATED SERVICES BE COMPETITIVELY OFFERED

A. Arguments in Favor of Competition for Metering-Related Services

Automated Energy, the Competitive Retail Providers, the Customer Group, MHI Power Options, the National Energy Marketers, Sithe, and Utility.com submitted comments in support of a competitive framework for metering-related services. These commenters stated that, in general, competitive markets provide participants with financial incentives to develop new, value-added services and products. (10) Thus, these commenters argue that allowing metering-related services to be competitively offered would lead to a more rapid and efficient implementation of advanced metering technologies and services. (11)

Commenters added that no economic reason exists for limiting the provision of metering-related services to monopolistic distribution companies, arguing that competitive meter providers should be able to realize economies of scale equal to or greater than those achieved by the distribution companies. (12) Sithe added that the necessary regulatory rules could be developed to ensure that metering-related service continue to be provided in a safe and accurate manner. (13) The Competitive Retail Providers stated that, in order to accurately assess the cost benefits of competitive metering, customers must receive accurate price signals regarding the costs incurred by distribution companies' in providing metering services. (14)

Automated Energy, Competitive Retail Providers, Customer Group, and Sithe argued that the distribution companies have failed to deliver advanced metering because, unlike companies operating in a competitive market, these regulated companies do not have the financial incentives to develop and market new products; indeed, these companies risk the creation of "stranded" costs when they attempt to invest in new technologies. (15) These commenters stated that unless the Department makes a clear decision on competitive metering, uncertainty regarding the recovery of investments in advanced metering equipment will continue to impede the installation of this equipment. (16)

Addressing the potential costs to distribution companies associated with the Page 8

development of competition for metering-related services, commenters first acknowledged that distribution companies could incur costs in a role of "provider of last resort" (i.e., providing metering-related services to those customers that are not receiving these services from a competitive provider). (17) Also, commenters envisioned that distribution companies would incur one-time costs to modify their existing metering systems to accommodate competitive metering. (18) These costs, the commenters argued, would be offset by cost efficiencies gained by the distribution companies as they use their modified systems. (19) Third, distribution companies might experience a slight increase in per-customer costs as their economies of scale erode due to competition. (20)

Regarding the societal costs that could result from initiating competition to metering-related services, the commenters acknowledged the difficulty in identifying the impact of competitive metering on the utilities' workforce. (21) However, the commenters note that significant changes to the workforce are already occurring with the development of new technologies, such as automatic meter reading. (22) The commenters state that, even without a move to competitive metering, many metering-related workers would likely transition into new positions, either with the distribution companies, competitive providers of metering services, or in other industries. (23)

Many commenters supporting competition of metering-related services

distinguished between large commercial and industrial ("C&I") customers, small C&I, and residential customers. (24) The commenters recommended that competition be phased-in, starting with large C&I customers, and then expanding to smaller customers after the Department has had the chance to analyze the costs and benefits of the competitive marketplace. (25) For example, Sithe recommended that the Department implement a pilot program for large C&I customers to determine whether competition would, in fact, lead to a more rapid and efficient implementation of advanced metering equipment. Sithe stated that such a pilot program could provide data not currently available since competition of metering-related services has only recently been implemented in a small number of states. (26) Utility.com stated its conclusion that, while the competitive provision of metering-related services will likely provide benefits to larger C&I customers, it is not likely to do so for smaller customers because of cost considerations. (27) Therefore, Utility.com recommends that distribution companies retain their monopoly over the provision of metering-related service for smaller customers. (28)

B. Arguments Opposed to Competition for Metering-Related Services

Fitchburg, LEAN, National Grid, NStar, Northeast Utilities, and the Unions submitted comments in opposition to competition in metering-related services. These commenters stated that opening metering-related service to competition would create little, if any, cost savings because: (1) economies of scope continue to exist for distribution companies providing bundled services (including metering-related services) within the current regulatory system; (2) the avoided costs associated with competition in metering-related services (i.e., the costs that distribution companies could save) would be relatively small and uncertain, particularly if, as expected, distribution companies are required to provide "default" metering-related services to their customers; and (3) distribution companies would incur additional costs due to competition (e.g., costs to modify their customer service computer systems) would exceed any avoided costs. (29)

These commenters stated that, because economies of scale continue to exist for distribution companies providing bundled services (including metering-related services) within the current regulatory system, distribution companies can provide metering-related services more efficiently than service providers operating in a competitive framework. (30) For example, National Grid stated that, because it provides comprehensive metering services to all of the customers in its service area, it is able to minimize costs associated with meter reading and maintenance, meter testing, and the purchasing of metering equipment. (31) This ability to minimize costs to consumers, they argue, could not be realized in a competitive

Page 9

marketplace. (32) Fitchburg argues that savings that would accrue to consumers if competition for metering-related services was introduced would be relatively small. (33) Other commenters agreed and reasoned that because distribution companies would need to provide "default" metering-related services to their customers, distribution companies would need to maintain the infrastructure necessary to provide these services. For example, NSTAR stated that, on average, the costs to provide metering-related services is approximately \$35 per customer. NSTAR estimates that approximately \$8 would be saved annually should a customer transfer to a competitive metering service provider. (34) Similarly, National Grid stated that, although its total MBIS costs are equal to \$68 million annually, it estimates cost savings of approximately \$4.5 million in a competitive environment. (35)

Commenters stated that the additional costs that distribution companies would incur once competition for metering-related services is initiated would likely exceed the costs estimated to be saved. (36) The distribution companies stated that costs would be incurred to upgrade and redesign billing and information systems and business practices to accommodate multiple customer metering options. (37) While no specific dollar amounts to update the systems were provided to the Department, these commenters suggested that the costs would be greater than the projected savings accrued as a result of the introduction of a competition for metering-related services. (38)

Moreover, the distribution companies stated that the introduction of competition for metering-related services would significantly increase the complexity in the reporting of consumption data because information would no longer be collected, validated, and managed by a single independent party. (39) The distribution companies emphasized that an error by one competitive provider would likely effect the accuracy of the entire wholesale settlement process, thus adversely affecting all competitive generation suppliers. (40) Finally, competition would cause significant, long-term deterioration in the quality of service and the level of customer comfort and satisfaction with utility-sponsored distribution service. (41)

The Unions commented that initiating competition for metering-related services would "inevitably result in a loss of relatively stable and well-paying jobs." (42) The Unions claimed that the quality and efficiency of the workforce would be compromised under a competitive metering framework because without regulatory oversight of competitive metering-related service providers, the employees would not be as highly trained as the employees of the distribution companies. (43)

C. Comments on Advanced Metering

Although commenters disagreed on whether metering-related services should be provided competitively, there was broad consensus among commenters regarding the importance of having advanced metering equipment (i.e., metering equipment that is capable of recording customers' electricity usage at 15 minute intervals) installed at customers' homes and facilities. (44) Commenters stated that the installation of advanced meters is essential for the development of a vibrant competitive generation market because it provides customers with the information necessary to allow them to adjust their levels and patterns of electric usage based on prevailing wholesale generation market. (45) Commenters provided numerous benefits associated with this type of price-responsive demand: (1) price reductions, both at the wholesale and retail levels; (46)

(2) improvements in the reliability of supply; (3) the development by suppliers of new products and services (e.g., multiple pricing options); (4) improvements in the wholesale financial settlement process administered by the Independent System Operator - New England; and (5) incentives for investment in energy efficiency measures. In addition to the benefits listed above, some commenters stated that price-responsive demand would improve distribution service reliability and would lower the costs incurred by distribution companies in providing this service. (47)

D. Analysis and Recommendations

1. Introduction

The Act directs the Department to make two determinations: (1) whether MBIS should be unbundled and provided through a competitive market; and (2) whether unbundling would provide substantive savings to consumers and, if so, whether such savings can be effected with little, if no disruptions to distribution company employee staffing levels. The Department addresses these issues below, as they apply to metering-related services.

2. Should metering-related services be unbundled from other monopoly service provided by distribution companies and provided through a competitive market?

No. The Department has stated that competitive markets are often better than regulated

ones in developing products and services that meet the wants and needs of customers. (48) Thus, one might surmise that competition in metering-related services would lead to technological advances to metering equipment being installed at the facilities and homes of customers. In addition, a competitive market for metering-related services would allow competitive providers to bundle generation-related and metering-related services in developing creative and innovative products for their customers. But, public policy requires more than surmise to warrant so radical a departure from time-honored practice. The introduction of competitive metering has, in fact, a significant downside, in that it would require the establishment of a detailed set of rules and standards that would be extremely time-consuming to develop and onerous to implement.

The complexity of initiating a competitive marketplace stems from the fact that no longer would a single entity, the distribution company, provide all metering services to customers in its service territory. Instead, under competition, customers would have the opportunity to choose among: (1) meter service providers ("MSPs") to provide the "hardware" component of metering-related services, and/or (2) meter data management agents ("MDMAs")(49) to provide the "software" component. The quality of work performed by MSPs and MDMAs would have wide-ranging effects. For example, if a single customer's meter is not installed and maintained properly, or if the customer's electric usage is not read, verified, and reported accurately, then all customers within a distribution service territory may be affected. (50) The process to initiate competition for metering-related services would also involve investigating issues that include, but are not limited to:

- How, and through what process, would MSPs and MDMAs be certified or licensed? How would they be required to demonstrate the required expertise? What role would distribution companies play in ensuring that these service providers are providing service in a safe, reliable, and accurate manner?
- How would technical standards for meters, and recording and communication devices be developed to ensure the seamless flow of information among MSPs, MDMAs, distribution companies and other entities?
- What rules would govern the information flow from MSPs to distribution companies (1) when a customer's existing distribution company meter will be removed and Page 11

replaced by a meter to be installed by a competitive provider, and (2) when a customer's competitively-provided meter will be removed and will need to be replaced by a distribution company meter?

- Similarly, what rules would govern the flow of customers' metered data from MDMAs to distribution companies, competitive suppliers, and other agents authorized by customers.
- How would customers' metered data flow from each customer's MDMA to the ISO, in order to support wholesale financial settlement activities?

Although the necessary rules, standards, and procedures certainly can be developed, the Department is concerned that the primary benefit identified by commenters, the efficient installation of advanced metering equipment, would suffer from likely delay as the necessary procedures were established. The Department has long recognized the important role that the installation of advanced metering equipment will play in the development of a healthy competitive generation market. (51) As stated by the commenters, the absence of such installations puts upward pressure on wholesale prices and compromises the reliability of the wholesale generation market. As such, the Department's primary criterion in determining whether metering-related services should be provided through a competitive market is whether such competition would be superior to the current regulatory framework, in terms of accommodating the installation of advanced metering equipment. The benefits to consumers from advanced metering can best and most promptly be secured through installation by incumbent distribution companies in the near term.

Protracted proceedings to determine rules, standards, and legislation before competition could be introduced for metering-related services would delay the installation of advanced metering equipment. This concern is validated by the experiences in other states that have endorsed competitive metering. In Pennsylvania, for example, the Public Utility Commission ("PUC") issued its final regulations on competitive metering and the deployment of advanced metering equipment in December 1998. (52) As of October 1, 2000, no advanced meters were installed by competitive providers and, indeed, no entity was certified by the PUC to provide competitive metering services. During the same period, December 1998 through October 2000, almost 100 advanced meters were installed by distribution companies. The New York Public Service Commission initiated its investigation into competitive metering on June 16, 1999. However, competitive metering will not be available until January 2001 and, then, only to the largest electricity consumers. The Department considers it likely that, even if the efforts and experience of these other states were to serve as a starting point for Massachusetts, the resolution of the many complex issues associated with competitive metering would still require a time-consuming and resource-intensive process. And it is important to recognize that, once these standards, rules, and procedures are established and in place, experience in other states tells us that, initially at least, few customers will turn to the competitive market for metering-related services and that those that do will be very large C&l customers.

In addition to developing the rules, standards, and procedures discussed above, the Department would need to determine, for each distribution company, (1) the costs each distribution company incurs in providing metering-related services to their customers, and (2) the metering-related costs that distribution companies may avoid as consumers migrate to competitive providers. Currently, metering-related costs are bundled with other costs associated with the monopoly services provided by Page 12

distribution companies. Customer bills do not list metering-related charges separate from other distribution-related charges. The introduction of a competitive market for metering service would require that distribution companies' metering-related charges be listed separately on customers' bills, in order to allow customers to compare competitors' prices with those of the distribution companies. As the Department stated in one of our early orders on the restructuring of the electric industry, "for customer choice to spur competition on an market, customers must be able to compare the prices and terms of the various products and services that are available This requires the identification of distinct products and services and the availability of clear and transparent prices. "(53) The Department additionally would need to determine what portion of the distribution companies' metering-related costs may be avoided when customers migrate to competitive metering providers, so that these costs would not be included on the bills of these customers. This issue, which is likely to be contentious, is discussed more fully in Section IV.D.3, below.

The Department concludes that the most efficient mechanism to ensure that consumers are offered advanced metering by distribution companies is through the existing regulatory framework, as opposed to the introduction of competition. Thus, the Department will open a proceeding, in January 2001, to establish the terms and conditions by which distribution companies would offer advanced metering service to their customers, and to ensure that customers and competitive suppliers are provided with the necessary information to make price-responsive consumption decisions.

The Department does not recommend precluding the introduction of competitive metering at a later date, particularly after February 2005. It is possible that, when both the wholesale and retail generation markets are more mature, a competitive market for metering would bring real value to electricity consumers. However, consistent with the comments received, it is better to provide regulatory certainty regarding investments in advanced metering equipment so as not to inhibit the installation of such equipment. Focusing on advanced metering to be offered by electric distribution companies in the near term will yield the greatest and most immediate benefit to customers and to the developing competitive generation market.

3. Would the introduction of competition of metering-related services result in substantive savings to consumers?

Not in the near term. In the above section, the Department addressed non-cost issues associated with a competitive metering framework and concluded that the existing regulatory framework would provide more metering-related benefits to customers. In this section, the Department addresses cost issues, as required by the Act. The Department's investigation into issues related to savings to consumers and societal costs involved four components: (1) the costs that would be avoided by distribution companies as a result of customers switching to competitive metering providers; (2) the costs that would be incurred by distribution companies to accommodate a competitive metering framework; (3) the costs that would be incurred by competitive providers; and (4) the impact of the competitive marketplace on loss of jobs.

In addressing cost issues, the Department relies on two underlying premises regarding the role that distribution companies would play in a competitive environment. The first premise is that the distribution companies will be obligated to the role of "metering service provider of last resort" (or "default" meter service provider) for those customers that are not receiving metering services from competitive providers. This is similar to the role that distribution companies will play in the competitive generation market. Without a default service provider of metering services in a competitive market, the Department notes that there would be customer confusion and dissatisfaction. The second premise is that the costs incurred by a distribution company to provide default metering services would be divided into a fixed and a variable component. The fixed component would include the costs associated with maintaining the resources (i.e., staffing levels, inventories

of metering equipment, and technical infrastructure) necessary to provide service to their "default" metering customers. These costs may be thought of as unavoidable because distribution companies would continue to incur the costs even when customers migrate to competitive metering providers. However, it is important to note that these fixed costs would likely decrease over time as more customers migrate to competitive metering providers. The variable component would include the costs that the distribution companies would avoid when customers migrate to competitive metering providers.

The Department examined the issue of savings to consumers both from a short-term and a long-term perspective. In the short term, the Department concludes that it is unlikely that the implementation of a competitive market for metering-related services would produce savings to consumers. This is because the vast majority of consumers will not venture into the competitive market and, instead, would use their distribution companies to provide metering-related services. (54) Distribution companies will need to maintain their current levels of staffing, inventories, and infrastructure. Therefore, the fixed, unavoidable component of companies' metering costs will be very high, while the avoidable component will be small. Given this likelihood, the Department sees little opportunity for consumers to realize savings by switching to a competitive provider.

In the long term, the expectation would be that significant numbers of customer would migrate to competitive providers and the number of default metering customers would decrease. This would allow distribution to reduce the level of resources dedicated to providing metering services, thus decreasing the unavoidable (i.e., fixed) component of distribution companies' metering costs, and increasing the level of avoidable costs. Whether this would result in cost savings to consumers that migrate to competitive providers depends on if competitive metering providers can offer these services more efficiently than distribution companies.

4. Could savings produced by the unbundling of metering-related services be realized with little, or no, disruptions to employee staffing levels of the distribution companies?

No. It is clear in the legislative mandate set out in Section 312 requires addressing the serious question of job loss if metering-related services were to be competitively provided. As with the savings issues discussed above, the Department examines the issue of staffing reductions both from a short-term and a long-term perspective. The Department's concludes that a successful implementation of a competitive metering framework would, in the long-term, result in substantial reductions to the staffing levels of distribution companies.

By the very nature of the work involved, providing services such as the installation, maintenance, inspection, and replacement of metering equipment, and the reading, inspection, and editing of metered data is a labor-intensive undertaking. National Grid and NStar each employ approximately 300 workers to provide metering-related service to approximately 1.4 million customer accounts in each of their respective service territories. (55) As discussed above, it is likely that few customers would switch to competitive providers in the beginning stages of competitive metering; therefore, disruptions to distribution company staffing levels would be minimal in the short term. However, it is reasonable to assume that, as the competitive market matures, customers would transition to the competitive market, and away from their distribution companies, for these services. As the number of customers to whom distribution companies provide metering-related services decreases, the Department considers it very likely that staffing level disruptions would become more pronounced. Therefore, the Department concludes that, in the long term, a competitive metering market would produce significant disruptions in distribution companies' employee staffing levels.

E. The Department's Recommendations Concerning Metering-Related Services

The Department concludes that metering-related service should not be unbundled and provided through a competitive market because such competition: (1) would be extremely complex to implement in the near term and would divert energy more productively devoted to promoting advanced metering by electric distribution companies; (2) would not produce benefits (i.e., the efficient implementation of advanced metering equipment) that would otherwise be realized through the existing regulatory framework; (3) may not result in cost savings to customers; and (4) would result in significant disruptions in distribution company employee staffing levels.

The Department will open a proceeding to establish terms and conditions by which distribution companies will install advanced metering equipment. Efforts along these lines will likely yield substantial benefits sooner.

- VI. SHOULD BILLING-RELATED SERVICES BE COMPETITIVELY OFFERED
- A. Summary of Comments
- 1. Comments filed in Support of Competition

Automated Energy, the Competitive Retail Providers, the Customer Group,

MHI, and the National Energy Marketers submitted comments in support of competitive billing-related services. These commenters stated that a competitive framework would provide competitive suppliers with the opportunity to send a single bill to their customers, which is important to suppliers (and the development of a robust competitive generation market) because customers prefer receiving a single bill, rather than two bills, for their electric service. (56) Under the billing options currently available, the only way customers can receive a single electric bill is through their distribution companies. Competitive suppliers argue that the inability to directly contact their customers through bills is problematic because it precludes suppliers from (1) using their bills as a means of offering new products and services (both electric- and non-electric related) to their customers, (2) differentiating themselves from other suppliers (i.e., establishing "brand" names for themselves), (3) using tailored bill presentations as a form of customer service, and (4) bundling customers' electricity bills with bills for other services, thereby allowing their customers to receive consolidated invoices. (57) Commenters claimed that these issues are more to competitive suppliers than to distribution companies because of the monopoly nature of distribution service. (58)

These commenters stated that there is no evidence, from states that allow a supplier single-bill option, of logistical or other problems that would preclude the implementation of such a billing option in the Commonwealth. (59)

2. Comments filed in Opposition to Competition

Fitchburg, LEAN, National Grid, NStar, WMECo, and the Unions submitted comments in opposition to competition in billing-related services. These commenters stated that competitive billing would have several adverse effects on customers and distribution companies. First, it would result in a weakening of the Department's ability to enforce its consumer protection regulations because of the increased number of competitive providers to whom the regulations would apply. (60) Second, competitive billing would weaken the relationship between distribution companies and their customers, stating that it is not clear how distribution companies would communicate with, and distribute Department-mandated and other information to, their customers. (61) The Department has historically valued the opportunity to include consumer notifications as bill inserts. (62) Third, commenters argue that introducing competition for billing-related services could create customer confusion on the part of customers as to which company is ultimately responsible for service and who to call in the event of an emergency. (63)

Distribution companies also noted concerns that their financial integrity could be effected by the introduction of competition for billing-related services. (64) In a Page 15

competitive environment, distribution companies would seek payment from competitive billing providers, rather than their customers, for distribution service. (65) The additional revenue risk from this arrangement could be substantial. (66) To address this concern, distribution companies would need to ensure that all competitive billing providers maintain adequate credit ratings or other financial instruments. (67) The costs for the distribution companies to acquire, review, and maintain this information would likely be passed on to consumers. (68)

With respect to cost savings, the commenters stated that customers may see increased billing costs under competition because distribution companies', as the "billing provider of last resort," have fixed costs that would be recovered from what would become a decreased customer base. (69) Also, the incremental costs associated with competitive billing (e.g., costs of developing communication and data exchange systems between the distribution companies and competitive billing providers) would be borne by ratepayers. (70)

- B. Analysis and Recommendations
- 1. Introduction

As stated above, the Act directs the Department to make two determinations: (1) whether MBIS should be unbundled and provided through a competitive market; and (2) whether unbundling would provide substantive savings to consumers and, if so, whether such savings can be effected with little, if no disruptions to distribution company employee staffing levels. The Department addresses these issues below as they relate to billing-related services.

2. Should billing-related services be unbundled from other monopoly service provided by distribution companies and provided through a competitive market?

No. The primary benefit identified by commenters supporting competitive billing is that it would provide the opportunity for competitive suppliers to send a single electric bill to their customers, as opposed to having the suppliers' charges included in the bills sent by the distribution company. The Department agrees with these commenters that a billing option that would allow suppliers to send a single bill to their customers would assist in the development of a healthy competitive generation market, because supplier-sent invoices could allow the supplier to create a brand name and to advertise and charge for services that they provide. The issue for the Department's consideration is whether a competitive billing framework would be superior to the existing regulatory framework, in terms of accommodating a supplier single-bill option.

Issues associated with competitive billing are less complex than those associated with metering. First, providing billing services does not require the installation of sophisticated technical equipment for which technical and communications standards need be developed. Second, unlike metering, billing services provided to customers by one competitive entity would not affect other customers in a distribution company's service territory. However, similar to metering, the introduction of competitive billing would require the development of rules, standards, and procedures not currently permitted by law.

Under a competitive framework, customers would have the opportunity to choose billing providers that could be separate entities from the customers' competitive generation suppliers. The Department would need to develop rules, standards, and procedures for distribution companies, competitive generation suppliers, and competitive billing providers to adhere to concerning the exchange of information regarding the billing provider and usage and payment information for each customer.

Moreover, distribution companies and competitive suppliers would be required to send usage and pricing information to the billing providers, which, in turn, would (1)

Page 16

prepare and

distribute customers' bills, (2) process accounts receivables from customers, and (3) allocate payments to the distribution companies and supplier pursuant to the Department's rules.

The Department concludes that the introduction of a third party into the billing process would unnecessarily add complexity to the process without adding real benefits. This is because the primary benefit identified by commenters supporting competitive billing, a supplier single-bill option, can be readily accommodated within the existing regulatory framework by requiring distribution companies to offer a third billing option to customers and competitive suppliers. (71) However, the Department anticipates that the availability of such an option would assist in the development of a competitive generation market because it would provide the opportunity for competitive suppliers to send a single electric bill to their customers, as opposed to having the supplier's charges included in the invoice sent by the distribution company.

Accordingly, the Department plans to open a proceeding, in early 2001, to investigate the manner in which a supplier single-bill option may be made available to customers and suppliers within the existing statutory and regulatory framework. We recognize that there are several critical issues that need to be resolved before a supplier single-bill option can be made available (e.g., supplier creditworthiness requirements, allocation of customer payments, protection of customers' and distribution companies' financial interests, distribution company bill inserts). However, the Department is convinced that these issues can be resolved in a manner that does not compromise existing consumer protections.

3. Would the introduction of competition of billing-related services result in substantive savings to consumers?

No. The Department notes that our response to this question is similar to findings made above concerning metering-related services. As with metering-related services, the Department relies on two underlying premises regarding the role that distribution companies would play in a competitive environment, that: (1) the distribution companies will serve as the default billing service provider; and (2) the costs incurred by a distribution company to provide default metering services would be divided into a fixed and a variable component (i.e., the fixed component are those costs associated with maintaining the resources necessary to provide service to their "default" billing customers; the variable component are those costs that distribution companies' avoid as a result of customers migration to competitive billing providers).

As with metering services, the Department examines the issue of savings to consumers both from a short-term and a long-term perspective. In the short term, the Department believes that the implementation of a competitive market for billing-related services would not produce savings to consumers because the vast majority of consumers will continue to use their distribution companies to provide billing-related services. Distribution companies will essentially need to maintain their current levels of staffing, inventories, and infrastructure. Therefore, the fixed, unavoidable component of companies' billing costs will be very high, while the avoidable component will be small. The Department sees little opportunity for consumers to realize savings by switching to a competitive provider.

In the long term, the expectation would be that significant numbers of customer would migrate to competitive providers and the number of default billing customers would decrease. This would allow distribution to reduce the level of resources dedicated to providing billing services, thus decreasing the unavoidable (i.e., fixed) component of distribution companies' metering costs, and increasing the level of avoidable costs. Whether this would result in cost savings to consumers that

migrate to competitive providers depends on the extent to which competitive metering providers can provide these services more efficiently the distribution companies.

4. Could savings produced by the unbundling of billing-related services be realized with little, or no, disruptions to employee staffing levels of the distribution companies?

No. As with the issues related to savings for consumers, the Department examined the issues of staffing reductions both from a short-term and a long-term perspective. As with competitive metering, the Department's concludes that a successful implementation of a competitive billing framework would, in the long-term, result in substantial disruptions in distribution company employee staffing levels.

As noted above, it is likely that few customers would switch to competitive providers in the beginning stages of competitive billing; therefore, disruptions to distribution company staffing levels would be more modest at first. However, it is reasonable to assume that, as the competitive market matures, customers would transition to the competitive market, and away from their distribution companies, for the provision of these services. As the number of customers to whom distribution companies provide billing-related services decreases, the Department considers it likely that staffing level disruptions would become more pronounced. Therefore, the Department concludes that, in the long term, a competitive billing market would produce significant disruptions in distribution companies' employee staffing levels. Likely, out-of-state export of metering and billing related jobs would adversely affect the utility employment sector of the Massachusetts economy.

C. Summary of the Department's Recommendations Concerning Billing-Related Services

The Department concludes that billing-related service should not be unbundled from other monopoly services provided by distribution companies and provided by a competitive market because such unbundling: (1) would be complex to implement; (2) would not produce benefits (i.e., a supplier single-bill option) that could not be produced through the existing regulatory framework; (3) may not result in cost savings to customers; and (4) would result in significant disruptions in distribution company staffing levels. Given the serious and difficult work that remains between now and March 2005, when the Electric Restructuring Act transition period ends, the Department is concerned that interposing, during the near term, a competitive billing entity between an electric company and its customers risks customer confusion and may derogate from the electric company's relationship with its customers and so impair its ability to serve those customers.

As stated above, the Department will open a proceeding to establish rules and procedures by which a supplier single bill option will be made available to customers and competitive suppliers.

VII. SERVICE TERRITORY EXCLUSIVITY

A. Introduction

G.L. c. 164, § 1B(a) requires the Department to define service territories for each distribution company by March 1, 1998, based on the service territories actually served on July 1, 1997, following municipal boundaries to the extent possible. The statute also provides that, as of March 1, 1998, "distribution companies shall have the exclusive obligation to provide distribution service to all retail customers within their respective service territories until terminated by effect of law or otherwise, and no other person shall provide distribution service within that service territory unless the written consent of the distribution company has been obtained and filed with the Department and clerk of the municipality so affected."

Pursuant to §312 of the Act, the Legislature directed the Department to investigate Page 18

whether distribution companies service territories should remain exclusive, or whether such exclusivity should be terminated or altered.

B. Summary of Comments

Goulston and Storrs ("Goulston") proposed that G.L. c. 164, § 1B(a) be amended to

permit competitive distribution companies to provide electric service in those areas of a community which remain undeveloped, despite the presence of an incumbent utility in that community. (72) Relying on the language of G.L. c. 164, § 1B(a), Goulston pointed out that the delineation of service territories based on areas "actually served" as of July 1, 1997 leaves unresolved the issue of undeveloped areas within a community, and that a distribution company may not have a clearly established franchise right within that area. (73) According to Goulston, opening up the development of a distribution infrastructure in undeveloped areas to new entrants would promote efficiency and result in lower costs for ratepayers without harming the incumbent utility. (74) Goulston contends that the concept of franchise exclusivity directly contradicts the Department's policies regarding pole attachments, which were intended to provide customers with expanded access to telecommunications goods and services. (75)

Goulston also proposed that the provisions of G.L. c. 164, § 1B(a) granting the incumbent distribution company the right of refusal to new entrants be repealed in their entirety. (76) According to Goulston, § 1B(a) inappropriately vests the right of a municipality to define service territories to the incumbent distribution company, in clear violation of the provisions of G.L. c. 164, §§ 87 and 88(77). Moreover, Goulston contends that the current provisions of G.L. c. 164, § 1B(a) fail to provide safeguards against the exercise of anticompetitive behavior by incumbent utilities against new entrants. (78)

In contrast, other commentors favored retaining the statutory provisions of G.L.

c. 164, §§ 1B(a). (79) National Grid maintained that Goulston's proposals would not result in improved service for ratepayers and would not facilitate the efficient development of a distribution system. (80) National Grid also stated that the "piecemeal development" sought by Goulston would impede the efficiency and reliability of the distribution network, and undermine the financial integrity of incumbent distribution companies as a result of "cream skimming" by developers. (81) Rather than opening up franchise exclusivity, National Grid suggests that the institution of performance-based regulation, especially if based on a benchmark system against other utilities, would provide customers with a more effective vehicle for improved service and lower costs. (82)

C. Analysis and Recommendation

Historically, each of the Commonwealth's investor-owned utilities have distributed electricity over clearly-defined service territories. (83) While these franchise areas remained generally undisturbed, (84) prior to the Act it was unclear whether utilities enjoyed exclusive franchises. (85) Consequently, the Department would be required on occasion to resolve a dispute concerning which utility was to supply a customer. (86) The enactment of G.L. c. 164,

§ 1B(a) resolved the issue in favor of exclusivity.

While Goulston has framed this matter in terms of market power and anti-competitive issues, it is clear that distribution services are presently, and will remain into the indefinite future, a monopoly service. (87) For over a century, distribution companies operated with a degree of protection for their franchise, in exchange for the assumption of certain obligations, including the obligations to serve all those within the service territory who apply for and are willing to pay for service, and an obligation to provide safe, reliable and adequate power. This obligation to serve has provided customers with the assurance that electric service will be available upon demand in a safe manner. The public policy considerations behind the treatment Page 19

of distribution franchises takes precedence over the theoretical constructs of market power and competitive behavior.

Moreover, the analogy to telecommunications policy cited by Goulston is misplaced, because, unlike the competitive access to telecommunications services, a new entrant to electric services would retain an exclusive right to provide electric service in its respective service area.

Goulston raises the issue of whether the phrase "actually served" contained in

G.L. c. 164, § 1B(a) is confined to those developed areas within a municipality, or includes undeveloped areas of that municipality. As noted above, the Department has historically conferred upon a utility a general right to operate within the municipality, unless otherwise restricted in the Department's order. The enactment of § 1B(a) has not affected this interpretation. The statute directs the Department to define service territories, "following municipal boundaries to the extent possible." It would be inconsistent to limit incumbent utilities to those areas receiving service as of July 1, 1997, while requiring that their franchise areas follow municipal boundaries, to the extent possible. The Department considers that the members of the Legislature, vested with representing the interests of their constituents, were fully aware that many areas exist within their districts which have not undergone development. Had the Legislature intended to restrict franchise rights to developed areas, it would not have included this condition as part of the statute. Based on the foregoing, the Department concludes that the term "actually served" is meant to encompass the municipality in which a distribution company is operating, versus the physical area reached by the lines of that utility.

The proposed amendments to G.L. c. 164, § 1B(a) propounded by Goulston would permit another utility, or more likely, a real estate developer, to build and operate a distribution system within an undeveloped section of a municipality then being served by an incumbent utility. The concept of "pocket" utilities is not novel; in the early days of the electric industry, a number of electric utilities operated as enclaves within another company's service territory. (88) The Department has recognized the safety and service difficulties associated with maintaining a distribution system owned by one company which is entirely located in the middle of another company's service territory. (89) While it is undisputed that a new entrant would be under the same obligation as the incumbent utility to provide safe, reliable, and adequate service, the Department finds merit to the concerns raised by other commenters over the developer's ongoing willingness or abilities to meet those obligations. The legislature did not, in our view, intend a patter of enclaves or exclaves in exclusive service territories.

Notwithstanding any initial representations by the developer of a "pocket utility," the developer may have no further financial interest in the system once the development has been fully built out, particularly if the developer intends to sell the lots versus maintaining the development as rental property. This lack of financial interest, coupled with the presence of an incumbent utility in the community with an obligation to serve, may provide the developer with little, if any, incentive to maintain their system. This would be particularly true if the system requires extensive upgrades. With no financial incentive to maintain an electric system requiring significant capital investment, a developer would face the choice of improving service, providing substandard service, or walking away from the system entirely, to the detriment of customers. If the incumbent utility is obligated to take over the failed system, the system's deficiencies and potential for incompatibility with the incumbent's network could jeopardize service and increase costs to the incumbent's own customers. The Department has often seen this pattern in the water industry: its repetition in the electric industry would not be advantageous to customers. (90)

Goulston expresses its concern that G.L. c. 164, § 1B(a) as presently written, conflicts with both G.L. c. 164, § 87 as it affects new entrants and G.L. c. 164, § 88 as it affects the Department's role in resolving service territory disputes arising from G.L. c. 164, § 87. Under principles of statutory construction, statutes Page 20

addressing the same subject matter are ordinarily construed to be consistent with one another, such that effect is given to every provision therein. (91) Additionally, it is presumed that the legislature was aware of existing statutes when enacting subsequent ones. (92) Allegedly inconsistent statutes addressing similar subject matter must be construed together in order to make a harmonious whole consistent with the legislative purpose, as well as avoid rendering any part of the legislation meaningless. (93)

Whenever two statutes are in conflict, statutory construction provides that if a specific provision is enacted subsequent to a more general rule, the specific provision applies. (94) Moreover, the reconciliation of allegedly inconsistent statutes must be done in harmony with common sense and sound reason. (95)

Applying these principles to G.L. c. 164, §§ 1B(a) and 87, the Department considers both statutes to be of general application addressing similar subject matter, i.e., service territory determinations for electric distribution companies. Therefore, the Department is required to construe them both collectively and with consideration of each provision therein, such that a harmonious result consistent with the legislative purpose is achieved without rendering any part of the statutes meaningless.

As stated above, § 87 requires approval of a municipality's aldermen or selectmen before a new entrant may distribute electricity, if another utility is already providing service in the community. Therefore, § 87 sets forth a mechanism by which a potential entrant may seek to provide service within a community presently receiving electric service through an incumbent utility. In relevant part, § 1B(a) adds the requirement that the written consent of the incumbent utility be obtained and filed with both the Department and affected municipality before a new entrant may distribute electricity in that community. (96) The filing requirements found in § 1B(a) do not supersede the approval process set forth in § 87; a potential entrant would still need to seek and obtain the approval of the municipality under § 87 before constructing and maintaining a distribution system. Therefore, the Department concludes that the provisions of §§ 1B(a) and 87 are not in necessary conflict.

Turning to the application of § 1B(a) to § 88, the Department also considers both statutes to be of general application addressing similar subject matter, thereby warranting a harmonious reading consistent with the legislative purpose without rendering any part of either statutes meaningless. As stated above, § 88 provides a party aggrieved by a decision of the board of aldermen or board of selectmen acting under § 87 to seek Department review of the adverse decision. However, § 88 does not provide a potential entrant aggrieved by an adverse decision by an incumbent utility exercising a right granted under § 1B(a) with the right to Department review. While it appears that an incumbent utility may potentially hold veto power over a new entrant, even if the municipality has granted their consent to the entrant, the Department notes that Chapter 164 demonstrates a strong intent by the Legislature to ensure that the service territories of electric distribution companies remain exclusive, to be altered only on a case-by-case basis based on mutual agreement of the neighboring distribution companies. To achieve this policy goal, the Legislature determined that it was appropriate to place restrictions on the application of § 88 to electric utilities, such that the approval of both the municipality and the incumbent utility would be necessary prior to the entry of a second electric distribution company in that community. (97) Based on this clear legislative intent, and the public policy considerations against the creation of "pocket" utilities stated above, the Department construes §§ 1B(a) and 88 in a harmonious manner consistent with the intent of the Legislature. Therefore, the Department finds that the provisions of §§ 1B(a) and 88 taken together serve to advance public policy and, as such, are not in conflict.

Based on the foregoing analysis, the Department concludes that no amendments to

G.L. c. 164, § 1B(a) are warranted at this time.

VII. CONCLUSION

Accordingly, after receiving written comments, and conducting a public hearing and technical session, the Department concludes and recommends as follows:

- (1) That the General Court undertake no legislative action to allow competition of metering-related services as it relates to the electric industry because no substantive savings would result to consumers, and there would be adverse disruptions to employee staffing levels of the distribution companies;
- (2) That the General Court undertake no legislative action to allow competition of billing-related services as it relates to the electric industry because no substantive savings would result to consumers and there would be disruption to employee staffing levels of the distribution companies;
- (3) That the General Court undertake no legislative action to alter the service territories of distribution companies, as defined in G.L. c. 164.

As detailed in the Report, the Department plans two proceedings designed to:

- (1) investigate how distribution companies will offer advance metering equipment to consumers; and
- (2) investigate the possibility of allowing competitive suppliers the option to send a single bill to their customers.

The Department appreciates the opportunity to present this Report to the General Court

outlining our conclusions and recommendations related to opening metering, billing, and

information services to a competitive marketplace. Although the Department has

recommended that the General Court not pursue any legislative action concerning MBIS Page 22 time, we will continue to work closely with consumer advocates, members of the utility $% \left(1\right) =\left(1\right) \left(1\right) \left$

industry and others, regarding these important issues as we work towards the development of \boldsymbol{a}

truly competitive and robust marketplace.

Respectfully submitted,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

- 1. Section 312 of the Act is attached as Appendix A.
- 2. DOER participated in the proceeding in an advisory role to the Department and as an advocate for competitive MBIS. The Department consulted with DOER prior to initiating this proceeding. As an advocate for a competitive marketplace, DOER submitted comments jointly with the Attorney General, Associated Industries of Massachusetts ("AIM") and The Energy Consortium.
- 3. The Attorney General, DOER, Associated Industries of Massachusetts ("AIM"), The Energy Consortium (filing jointly and collectively referred to herein as the "Customer Group") (Appendix B) and the Low-Income Energy Affordability Network (Appendix C).
- 4. National Grid (Appendix D), Northeast Utilities System (Appendix E), Fitchburg Gas and Electric Light Company (Appendix F), Bay State Gas Company (Appendix G), NSTAR Companies (Appendix H); and Berkshire Gas Company, Boston Gas Company, Colonial Gas Company, Commonwealth Gas Company, Essex Gas Company, Fall River Gas Company and North Attleboro Gas Company (filing jointly) (Appendix I). These seven commenters are collectively referred to herein as "Distribution Companies".
- 5. MHI Power Options (Appendix J), Automated Energy (Appendix K), Utility.com (Appendix L), Schlumberger Resource Management Services North America (Appendix M), SITHE (Appendix N), National Energy Marketers Association (Appendix O); and Enron Energy Services, Essential.com, New Energy East, L.L.C., SmartEnergy.com, Green Mountain Energy, Exelon Energy and Insite Services, L.L.C. (filing jointly and collectively referred to herein as "Competitive Retail Providers") (Appendix P).
- 6. Utility Workers Union of America, AFL-CIO ("Unions") (Appendix Q).
- 7. Goulston & Storrs (Appendix R).
- 8. The Attorney General, DOER, Associated Industries of Massachusetts and The Energy Consortium (filing jointly) (Appendix 1); Cape Light Compact (Appendix 2) National Grid (Appendix 3), Fitchburg Gas and Electric Light Company (Appendix 4), Bay State Gas Company (Appendix 5), NSTAR Companies (Appendix 6), Utility.com (Appendix 7), Schlumberger Resource Management Services North America (Appendix 8), SITHE (Appendix 9), Competitive Retail Providers (Appendix 10), Utility Workers Union of America, AFL-CIO (Appendix 11) and Goulston & Storrs (Appendix 12).
- 9. The transcript of the public hearing and technical session is attached as Appendix 13.
- 10. Appdx. B at 6; Appdx. K at 5; Appdx. L at 6-7; Appdx. N at 15-16; Appdx. P at 1.
- 11. Appdx. K at 4; Appdx. B at 6-10; Appdx. N at 13, 16-20; Appdx. 9 at 4-5.

- 12. Appdx. P at 11-12; Appdx. at 7; Appdx. N at 13-14.
- 13. Appdx. N at 13.
- 14. Appdx. P at 11-12.
- 15. Appdx. K at 3-4; Appdx. P at 6-10; Appdx. B at 6-7; Appdx. N at 15.
- 16. Appdx. K at 3-4; Appdx. P at 11-12; Appdx. M at 8-9; Appdx. N at 10-11.
- 17. Appdx. B at 11-12; Appdx. N at 12.
- 18. Appdx. B at 12.
- 19. Id.
- 20. Id.
- 21. Id. at 13.
- 22. Id. at 12-13.
- 23. Id. at 13.
- 24. Appdx. 1 at 2; Appdx. P at 12; Appdx. L at 7-8; Appdx. N at 18, 21; Appdx. K at 5-6.
- 25. Appdx. P at 12; Appdx. 1 at 2. The Customer Group recommended that the Department implement competitive metering for large C&I customers at this time, while continuing the investigation on competitive metering for small customers and filing a supplement report with the legislature on this issue no later than October 1, 2001. Appdx. 1 at 2.
- 26. Appdx. N at 19-22.
- 27. Utility.com cited a study that concluded that regulated companies could provide advanced metering to smaller customers for \$2.50 per month, while the cost for competitive providers would be \$21.66. Appdx. L at 9 citing Arthur Anderson, Cost Impact of Competitive and Network Meter Reading in New York: Final Report to the New York Department of Public Service, at 28 (November 1998).
- 28. Appdx. L at 7-9.
- 29. Appdx. F at 2-4; Appdx. D at 12, 15-16; Appdx. H at 13-15; Appdx. E at 7-8.
- 30. Appdx. F at 2-3; Appdx. D at 12-13; Appdx. H at 12; Appdx. E at 7-8.
- 31. Appdx. D at 12.
- 32. Id. at 12-13.
- 33. Appdx. F at 2-3.
- 34. Appdx. H at 17-18.
- 35. Appdx. D at 16-17.
- 36. Appdx. E at 3-4; Appdx. D at 13-14; Appdx. H at 15-16.
- 37. Appdx. H at 19.
- 38. Appdx. E at 4; Appdx. D at 13-14.

- 39. Appdx. D at 27-28.
- 40. Appdx. D at 10.
- 41. Appdx. H at 20; Appdx. E at 2-3.
- 42. Appdx. Q at 10.
- 43. Id. at 12-14.
- 44. Appdx. K at 1; Appdx. P at 9; Appdx. B at 8; Appdx. F at 3; Appdx. D at 4, 13; Appdx. J at 2; Appdx. H at 23-24; Appdx. M at 2; Appdx. N at 10-12; Appdx. L at 1, 3-5; Appdx. E at 7-8.
- 45. Appdx. K at 1; Appdx. P at 9-12; Appdx. B at 6-11; Appdx. F at 1; Appdx. D at 1; Appdx. J at 1; Appdx. M at 2; Appdx. N at 10-12; Appdx. L at 5; Appdx. E at 7-8.
- 46. According to recent analysis of 17 months experience in California power exchange, during high peak range, reducing system demand has a value (in reducing price to everyone) of more than 70 cents per KWH. Appdx. L at 5.
- 47. Appdx. B at 7; Appdx. M at 7-8.
- 48. See e.g., Electric Restructuring, D.P.U. 96-100 (1996).
- 49. The terms meter service providers and meter data management agents are the terms often used in other states (e.g., California, Pennsylvania, and New York), that have introduced competitive metering.
- 50. This is because, in every hour, the total of all customers' retail usage that is reported to the ISO must equal the wholesale metered load.
- 51. See Terms and Conditions, D.P.U./D.T.E. 97-65, at 59 (1997).
- 52. Pursuant to these regulations and settlement agreements submitted by the Pennsylvania electric distribution companies, competitive metering is being implemented in certain, but not all distribution company service territories. Source -- Annual Report, Advanced Metering Activities, October 1, 1998 October 1, 1999.
- 53. Electric Industry Restructuring, D.P.U. 95-30, at 39 (1995).
- 54. This conclusion is based on the experience in California regarding competitive metering.
- 55. Appdx. B at 12; Appdx. H at Appendix C.
- 56. Utility.com cited a survey conducted by the New York Public Service Commission that found that 80 percent of survey respondents indicated that they dislike receiving two electricity-related bills. Appdx. L at 2.
- 57. Appdx. P at 7-9.
- 58. Appdx. P at 7-8.
- 59. Appdx. P at 7; Appdx. B at 1-2; Appdx. L at 2.
- 60. Appdx. D at 24; Appdx. H at 23 and Appdx. 6 at 12.
- 61. Appdx. H at 21.
- 62. Appdx. H at 23.
- 63. Appdx. Q at 11.

- 64. Appdx. D at 28-29.
- 65. Id.
- 66. Id. at 29.
- 67. Id.
- 68. Id.
- 69. Appdx. 11 at 5; Appdx. H at 18; Appdx. 6 at 15.
- 70. Appdx. E at 12.
- 71. The Department notes that, although this option would be available to customers, competitive suppliers would not be required to offer it. Those suppliers that did not offer such an option simply would not do business with customers that desired this option.
- 72. Appdx. R at 2-3.
- 73. Appdx. 12 at 2.
- 74. Appdx. R at 3; Appdx. 12 at 2-3.
- 75. Appdx. R at 4-5, citing Pole Attachments, D.T.E. 98-36-A.
- 76. Appdx. R at 4.
- 77. Appdx. R at 4; Appdx. 12 at 3. G. L. c. 164, § 87 provides that, if there is a person already engaged in the manufacture, sale, or distribution of electricity within a municipality, no other person may lay, erect, maintain or use wires for the transmission of electricity over or under the lanes or highways of said municipality, without the consent of the aldermen or board of selectmen granted after notice and public hearing. G.L. c. 164, § 88 grants a person aggrieved by the decision of the aldermen or board of selectmen pursuant to either § 87 or G.L. c. 164, § 86 (a parallel statute applicable to gas utilities) the right to seek an appeal of that decision from the Department.
- 78. Appdx. R at 4-5; Appdx. 12 at 5.
- 79. Appdx. B at 18-19; Appdx. F at 6-7; Appdx. D at 30-38; Appdx. 3 at 12-14; Appdx. H at 26-32; Appdx. 6 at 21; Appdx. I at 6; Appdx. Q at 16-17; Appdx. E at 16.
- 80. Appdx. 3 at 12.
- 81. Id. at 13.
- 82. Id. at 13-14.
- 83. Model Rules and Regulations, D.P.U. 96-100, at 39 (1996); Electric Restructuring, D.P.U. 95-30, at 5. Typically, a utility received a general right to operate within a municipality, without restriction. Colonial Gas Company, D.P.U. 92-171 (1992); Bay State Gas Company, D.P.U. 87-62 (1987); Lee Electric Company, D.P.U. 4212 (1931). In some cases, the Department placed a geographic limit on the area within the municipality to be served by the new entrant. See, for example, Commonwealth Gas Company/Bay State Gas Company, D.P.U. 86-138/179 (1987) (respective service areas within Mendon divided between two entrants); Blackstone Gas Company, D.P.U. 13786 (1962) (utility granted franchise in Bellingham south of a line running easterly from Mendon to Blackstone).
- 84. At times, an incumbent utility will voluntarily agree to allow an adjacent Page 27

- utility to provide service to a limited area of the incumbent's service territory, if the incumbent's construction costs for extending service greatly exceed those of the other utility. The Department has long recognized that there is "nothing legally intricate or complicated about breaking off marginal areas or remote sections of franchises for economic reasons." Dedham and Hyde Park Gas Company, D.P.U. 9751, at 2 (1951). The enactment of G.L. c. 164, § 1B(a) serves to ratify this long-standing custom.
- 85. Electric Restructuring, D.P.U. 95-30, at B.3-B.10.
- 86. Ecological Fibers, Inc., D.P.U. 85-71 (1985); Wyman-Gordon Company, D.P.U. 18363 (1977); Curtiss Products, Inc., D.P.U. 11486 (1955). In one case were a gas company had provided only minimal streetlighting service under an electric franchise granted some 17 years previous, the Department's predecessor, the Board of Gas and Electric Light Commissioners, granted a new entrant the right to also provide electric service within the town. Re Easthampton Gas Company, G&E 517 (August 9, 1907).
- 87. Model Rules and Regulations, D.P.U. 96-100, at 107 (May 1, 1996); Electric Utility Restructuring, D.P.U. 95-30, at 28-29 (1995).
- 88. A.W. Perry, Inc., D.P.U. 7697 (1947); Maspenock Electric Light Company, D.P.U. 4695 (1933); Third Annual Report of the Board of Gas Commissioners, at 67 (1888).
- 89. See Stow Municipal Electric Department, D.P.U. 94-176, at 99 (1996).
- 90. See e.g., West Stockbridge Water Company, D.P.U. 91-143, at 7-8 (1992); Astro Water Supply, D.P.U. 88-27, at 4-14 (1988); Wyl de Wood Water Works, D.P.U. 86-93, at 3-6, 27-32 (1987); Hingham Water Company/Nantasket Beach Water Works, D.P.U. 18208/18370, at 1-2 (1975); Agua Corporation, D.P.U. 15291 (1971); Community Utilities, D.P.U. 16380, at 2-4 (1970).
- 91. 2B Singer, Sutherland Statutory Construction \S 51.02, at 189 (6th ed. 2000). See also Green v. Wyman-Gordon Co., 422 Mass. 551, 554 (1996); St. Germaine v. Pendergast, 411 Mass. 615, 626, (1992).
- 92. LaBranche v. A. J. Lane & Co., 404 Mass. 725, 728 (1989).
- 93. Nercessian v. Board of Appeal on Motor Vehicle Liability Polices and Bonds et. al., 46 Mass. App. Ct. 766, 771 (1999); Healey v. Commissioner of Pub. Welfare, 414 Mass. 18, 25-26 (1992); Independence Park, Inc. v. Board of Health of Barnstable, 403 Mass. 477, 480 (1988).
- 94. 2B Singer, Sutherland Statutory Construction § 51.02, at 187 (6th ed. 2000).
- 95. Mass. Commn. Against Discrimination v. Liberty Mut. Ins. Co., 354 Mass. 408, 414 (1968).
- 96. Further evidence of the Legislature's express intent to retain \S 87 is found in Section 230 of the Act, which expanded the phrase "manufacture and sale" of electricity as found in \S 87 to include "distribution" of electricity. See St. 1997, c. 164, \S 230.
- 97. The Department notes that the provisions of § 88 would still be available to parties receiving the incumbent utility's permission, yet are denied entry by the municipality.